by Section 128 of the Ordinance, and in reply to this submission Mr. Macassey says that this section has no application to non-service. In the absence of any statutory definition as to what is a proceeding in bankruptcy it seems to me that the service of an affidavit in support of a motion is very much part of a proceeding, and I hold that this matter comes within the scope of Section 128. The position then is that the omission to serve the schedule properly will not invalidate the proceeding "unless the Court is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the Court." Mr. Macassey does not contend that any injustice which cannot be remedied by the Court has occurred, and therefore I hold that this objection also must fail. I feel it desirable to say, however, that errors of this sort should not occur. I appreciate the matter is a complicated one, but that is all the more reason for the exercise of a degree of care which would prevent error — at least an error of this type.

Mr. Macassey's third objection is that the affidavit does not comply with the rules of evidence, particularly these relating to hearsay. In support of this objection he refers to the fourth paragraph which reads "partly from information given to me by the bankrupt and partly from investigation of the bankrupt's affairs I believe the following to be true." Now while I concede that in a quasi-criminal proceeding of this nature the allegations against the bankrupt must, if they are to succeed, be proved strictly by the methods of proof prescribed by the Evidence Ordinance, I think Mr. Macassey's objection is, at least, premature. It may be that part of the information given to Mr. Alcock by the bankrupt would amply support the surviving charge. I agree that in view of the wording of the fourth paragraph the possibility of hearsay must not be overlooked, but I think the correct method for testing the evidential value of the affidavit should be cross-examination of Mr. Alcock in the witness box. For this reason I think this objection also must fail.

Order accordingly.

Solicitors: *Battenberg & Talma.*

Re YEO JIN GUAT (No. 3)

[O. C. J. (Whitton J.) June 19, 1954]

[Singapore — Bankruptcy No. 85 of 1952]

Bankruptcy Ordinance (Cap. 45), s. 114(c) — Motion to commit bankrupt — Whether bankrupt had reasonable ground of expectation of being able to pay debt.

This was a motion to commit a bankrupt under the provisions of s. 114 of the Bankruptcy Ordinance, the charge being that he on the 20th of May 1952 contracted a debt of $11,458 due to Montor Ltd., Singapore without any reasonable ground of expectation of being able to pay it. The Official Assignee proved that at the date the bankrupt contracted the debt, he had in fact liabilities very many times exceeding the amount of this debt and also much exceeding his existing assets at that date. In reply it was contended on behalf of the bankrupt that as at the time the debt was contracted, the bankrupt had assets exceeding $400,000 it could not be said that he contracted the debt without any reasonable ground of expectation of being able to pay it.

Held: the contention of the bankrupt must be upheld and therefore the motion must be dismissed.

Case referred to:—

(1) *Re Chan Leong Whatt* (1910), 12 S.S.L.R. 32.

MOTION to commit Bankrupt.

N. L. Macassey for the bankrupt.

W. G. Alcock, Official Assignee in person.

Whitton J. (delivering oral judgment): — The charge at present before the Court is that the bankrupt contracted on the 20th May 1952 a debt of $11,458 due to Montor Limited of the Arcade Building, Raffles Place, Singapore, without any reasonable ground of expectation of being able to pay it, and thereby committed an offence punishable under section 114(c) of the Bankruptcy Ordinance, Chapter 15.

Now, the Official Assignee has shown to my satisfaction that at the date the bankrupt contracted this debt, he had in fact liabilities very many times exceeding the amount of this debt and also much exceeding his existing assets at that date. This evidence, in my view, *prima facie* establishes the case in support of the Official Assignee's motion.

In reply to this case, the Defence puts forward two main grounds; the first is that if the correct view of what for convenience I shall call interest and appropriation aspects of the debts is applied to the bankrupt's situation, the debtor, in view of his admitted assets, was not in fact really insolvent at all. The second ground put forward by Mr. Macassey for the defence is that as the Official Assignee concedes that at the date the debt was contracted the bankrupt had assets exceeding $400,000 and therefore was clearly in a position to pay this particular debt of $11,000 odd, it cannot be said he contracted this debt without any reasonable ground of expectation of being able to pay. To put the matter shortly, he suggests that a man who has assets amounting to something in the nature of $400,000, whatever his liabilities at that date may be, cannot be said to have had no reasonable ground of expectation of being able to pay a debt of $11,000 odd.

As regards this second submission by the defence, the Official Assignee relies on the case of *Re Chan Leong Watt*[1] and on the judgment of Hyndman Jones C.J., therein. Now, I need hardly say that, if I was satisfied that this was a Court of Appeal authority on the particular point in issue now before me, I would of course be bound by that authority, but I am of the view that the case in question cannot be regarded as a Court of Appeal decision on this particular matter. Even looking at that judgment alone, which of course has my very careful consideration, being a judgment of a Judge of the eminence he was, I think that the facts of the present case can be distinguished, and in view of the English cases cited and of the interpretation which appears to me to be the correct one to be placed upon the section, I hold that this second ground must succeed in the circumstance. I do not propose to express any opinion on the matter relating to interest and appropriations.

The motion is therefore dismissed.

Motion dismissed.

Solicitors: *Battenberg & Talma.*

Re ALKAFF SETTLEMENT; ALKAFF & ORS. v. ALKAFF & ORS.

[O. C. J. (Taylor J.) December 22, 1954]

[Singapore — Originating Summons No. 249 of 1953]

Will and Trust — Settlement — Payment of income to successive life tenants — Estate Duty Ordinance (Cap. 227) — Liability for estate duty — Practice — Interest on estate duty — Whether interest payable out of corpus of settled properties or income — Costs.

This was an application for decision by the Court of certain questions arising out of a settlement made in 1893 under which the income of the settled properties was to be paid for a period approximating to the longest permissible under the rule against perpetuities, to the sons of certain persons for life and after their respective deaths to their respective sons for their life-times and so on through remoter degrees of male issue with an ultimate trust of the corpus of the settled properties in favour of other beneficiaries at the end of such period.

Under the provisions of Part IV of the Estate Duty Ordinance when the various income beneficiaries die during the period of the income trust the trustees of the settlement are accountable for estate duty upon the cessor of the various life interests. The estate duty itself is payable out of the corpus of the settled properties.

In practice the duty cannot be paid immediately on the death of a beneficiary, and under s. 26 of the Estate Duty Ordinance interest upon the amount of the duty runs at the rate of 4% per annum from the date of death until the date of the actual payment of the duty.

The trustees applied to the Court for directions as to whether they should pay such interest out of the corpus of the settled properties or out of income and as to how the burden of it should be borne as amongst the various beneficiaries under the settlement.

Held: (1) no part of the interest so paid should be borne by the income beneficiaries other than those succeeding to the share of the deceased beneficiary in respect of whose death the duty and interest becomes payable; (2) in cases where the estate duty is paid by the trustees within the period of one year from the date of death of the beneficiary in question the whole amount of the interest upon it should be paid out of the income of the settled properties and recouped from the income under the settlement of the persons succeeding to the share of the deceased beneficiary; (3) where the duty has not been paid within one year from the date of the death of the deceased beneficiary in question, the same principles as in (2) above should ordinarily apply, but special circumstances might arise which would render it impracticable or inequitable for this course to be followed and each such case would have to be considered on its own merits, as necessary. Re Syed Hashim[3] not followed.

Under the terms of the settlement the trustees were directed to pay "all expenses of and incidental to . . . the execution of the Trusts of the Settlement" out of the income of the settlement. On the question as to whether the costs of these proceedings should be in the circumstances paid out of corpus or income, —

Held: although as a general rule such costs would be ordered to be paid out of corpus, in this case, in view of the words of the settlement above referred to, the costs should be paid out of income. Syed Omar Alkaff v. Syed Abdulrahman Alkaff[4] followed.

Cases referred to:—

(1) *Howe v. Kingscote* (1903) 2 Ch. 67.

(2) *Alcock v. Sutcliffe* (1847) 17 L.J.Q.B. 120.

(3) *Re Syed Hashim* (1936) M.L.J. 245; (1936) S.S.L.R. 152.

(4) *Syed Omar Alkaff v. Syed Abdulrahman Alkaff* (1946) M.L.J. 63.

ORIGINATING SUMMONS.

T. E. Atkinson for the plaintiffs.

K. Gould for the 1st defendant.

J. K. Gale for the 2nd defendant.

Cur. Adv. Vult.

Taylor J.: — This is an application for decision by the Court of certain questions arising out of a settlement made in 1893.

The family are Hadramaut Arabs and, of course, Moslems. Their interests are in owning, developing and managing town lands. The settlor conveyed property to trustees, on trust to pay the income, derived mainly from rents, to the descendants, in the male line, of himself and his brother for a period approximating to the longest permissible under the rule against perpetuities and then to distribute the corpus among the surviving grandsons of the settlor and his brother. Each left grandsons, some of whom have died and have been succeeded by great-grandsons who now share the income but can never share the corpus. Hence it is of the utmost importance that the trustees should observe, as strictly as practicable, the distinction between income and capital liabilities.